

WILLIAM L. STERN (CA SBN 96105)
 WStern@mofo.com
 MORRISON & FOERSTER LLP
 425 Market Street
 San Francisco, California 94105-2482
 Telephone: 415.268.7000
 Facsimile: 415.268.7522

ERIN M. BOSMAN (CA SBN 204987)
 EBosman@mofo.com
 JULIE Y. PARK (CA SBN 259929)
 JuliePark@mofo.com
 KAI S. BARTOLOMEO (CA SBN 264033)
 KBartolomeo@mofo.com
 MORRISON & FOERSTER LLP
 12531 High Bluff Drive
 San Diego, California 92130-2040
 Telephone: 858.720.5100
 Facsimile: 858.720.5125

Attorneys for Defendant
 FITBIT, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

KATE MCLELLAN, TERESA BLACK,
 DAVID URBAN, ROB DUNN, RACHEL
 SAITO, TODD RUBINSTEIN, RHONDA
 CALLAN, JAMES SCHORR, and BRUCE
 MORGAN, Individually and on Behalf of All
 Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

Case No. 16-cv-00036-JD

**DEFENDANT FITBIT, INC.'S
 STATEMENT OF RECENT DECISION**

Date: No hearing (per Dkt. No. 95)

The Honorable James Donato

JUDITH LANDERS, LISA MARIE BURKE,
 and JOHN MOLENSTRA, Individually and on
 Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

Case No. 16-cv-00777-JD

1 Defendant Fitbit, Inc. submits this Statement of Recent Decision under Local Rule 7-
 2 3(d)(2) to bring to the Court's attention a relevant judicial opinion published after Defendant filed
 3 its Reply in Support of its Motion to Compel Arbitration and to Stay or Dismiss, Dkt. No. 94.

4 Attached as Exhibit A is the U.S. Supreme Court's decision in *Kindred Nursing Centers*
 5 *L.P. v. Clark*, 137 S.Ct. 1421, 2017 WL 2039160 (May 15, 2017). In a 7-1 ruling, the Supreme
 6 Court held that the Federal Arbitration Act ("FAA") applies both to "contract formation and
 7 contract enforcement." Slip Op. at 7. The Court rejected the proposition that "[t]he FAA's
 8 statutory framework applies only after a court has determined that a valid arbitration agreement
 9 was formed." *Id.* at 8 (emphasis in original). To the contrary, the Court explained:

10 By its terms, ... the Act cares not only about the "enforce[ment]" of
 11 arbitration agreements, but also about their initial "valid[ity]"—that
 12 is, about what it takes to enter into them. Or said otherwise: A rule
 13 selectively finding arbitration contracts invalid because improperly
 14 formed fares no better under the Act than a rule selectively refusing
 to enforce those agreements once properly made. *Id.* If it were
 otherwise, the Court held, "[t]he FAA would then mean nothing at
 all—its provisions rendered helpless to prevent even the most
 blatant discrimination against arbitration." *Id.* at 8-9.

15 Dated: May 31, 2017

MORRISON & FOERSTER LLP

17 By: /s/William L. Stern

18 William L. Stern

19 Attorneys for Defendant
 20 FITBIT, INC.